

Memorandum of Points and Authorities, exhibits, and other documents submitted herewith.

The Plaintiffs are entitled to judgment as a matter of law with respect to each of the three claims in their Complaint. Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” into waters of the United States, except in compliance with the terms of a permit, such as a National Pollution Discharge Elimination System (“NPDES”) Permit issued by the EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 505 of the CWA provides that “[A]ny citizen may commence a civil action on his own behalf against any person ... who is alleged to be in violation of an effluent standard or limitation under this chapter” 33 U.S.C. § 1365(a)(1)(A). “Effluent standard or limitation” includes “an unlawful act under subsection (a) of Section 301 of this title,” including the prohibition against unpermitted discharges. 33 U.S.C. § 1365(f)(1).

Defendant Aurora Energy Services, LLC (“AES”) is the operator of the Seward Coal Loading Facility (“Facility”). Defendant Alaska Railroad Corporation (“ARRC”) is the owner of the Facility. Neither Defendant AES nor ARRC have a permit under the Clean Water Act (“CWA”) to discharge coal (a pollutant under the CWA) from the Facility into Resurrection Bay and/or wetlands on or adjacent to the Facility property, which are waters of the United States. Defendants have not applied for, nor obtained, a permit for discharges of coal from the Facility into waters of the United States.

Because there is no genuine issue of material fact regarding Defendants’ discharges of coal from the Facility and their duty to obtain a permit for those discharges into waters of the United States, Plaintiffs respectfully request this Court to issue an order granting summary judgment on Plaintiffs’ First, Second and Third Claims, finding Defendants in violation of the

CWA, and finding that Defendants have committed at least 357 violations of the CWA during the statute of limitations period.

DATED: May 14, 2012

Respectfully submitted,

s/Brian Litmans

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CERTIFICATE OF SERVICE

I certify that on May 14, 2012, a copy of **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** was served electronically upon:

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